

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RAFAEL JESUS ALMEIDA,

Plaintiff,

vs.

No. CIV 17-0461 JB/GBW

SAN JUAN COUNTY ADULT DETENTION
CENTER, WARDEN HAVAL, ASST
WARDEN WEBB, and UNKNOWN NAMED
OFFICERS & OFFICIALS OF SAN JUAN
COUNTY ADULT DETENTION CENTER,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court, under rule 41 (b) of the Federal Rules of Civil Procedure, on Plaintiff Rafael Jesus Almeida's Complaint for Violation of Civil Rights, filed April 17, 2017 (Doc. 1) ("Complaint"). The Court will dismiss the Complaint without prejudice for failure to comply with court orders and for failure to prosecute.

On April 19, 2017, the Honorable Gregory B. Wormuth, United States Magistrate Judge, granted Almeida leave to proceed in forma pauperis under 28 U.S.C. § 1915 and ordered Almeida to make an initial partial payment. See Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915(b), and to Make Payments or Show Cause at 1-2, filed April 19, 2017 (Doc. 4) ("First Order"). The First Order also notified Almeida that, after he made the initial partial payment, he would need to pay the full filing fee in monthly payments of twenty percent of the preceding month's income credited to his prisoner's account or Almeida would need to show cause why he should not have to make those payments. See First Order at 2. Almeida paid the initial partial payment, but sought an extension of time to make the requisite monthly

payments. See Letter from Rafael Almeida to United States District Court of New Mexico at 1 (dated July 16, 2017), filed July 19, 2017 (Doc. 8). Judge Wormuth granted Almeida's request for an extension of time, and ordered Almeida to begin making the monthly payments or show cause by March 15, 2018 why the Court should excuse him from making them. See Order Granting Extension of Time to Make Monthly Payments of Filing Fees at 2, filed February 13, 2018 (Doc. 9)("Second Order"). By March 15, 2018, Almeida had not made any monthly payments nor did he show cause why the Court should excuse him from making the monthly payments.

The copy of the Second Order that the Court mailed to Almeida's address of record was returned as undelivered on February 22, 2018. See Letter from United States District Court of New Mexico to Rafael Jesus Almeida at 1 (dated February 18), filed February 22, 2018 (Doc. 10). Judge Wormuth subsequently issued a show cause order, directing Almeida to notify the Court of a new address, or otherwise to show cause, within twenty-one days of entry of the show cause order why the Court should not dismiss the case. See Order to Show Cause at 1-2, filed February 28, 2018 (Doc. 11)("Show Cause Order"). The copy of the Show Cause Order mailed to Almeida's address of record was also returned as undelivered. See Letter from United States District Court of New Mexico at 1, filed March 8, 2018 (Doc. 12). More than twenty-one days have elapsed since the Court's entry of the Show Cause Order, and Almeida has not provided the Court with a new address, responded to the Second Order or Show Cause Order, or otherwise shown cause why the Court should not dismiss the case.

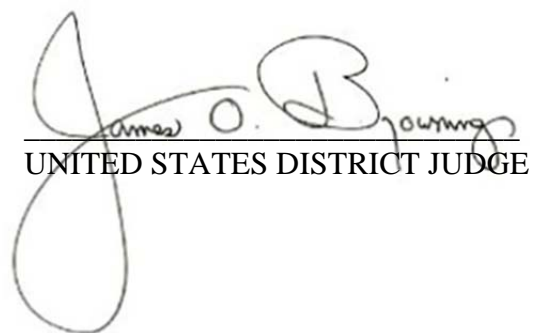
Pro se litigants must follow the Federal Rules of Civil Procedure and simple, "nonburdensome local rules." Bradenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980). The local rules require litigants, including prisoners, to keep the Court apprised of their proper

mailing addresses and to maintain contact with the Court. See D.N.M. LR-Civ. 83.6 (“All attorneys of record and parties appearing *pro se* have a continuing duty to notify the Clerk, in writing, of any change in their firm name, mailing addresses, telephone numbers, facsimile numbers, or electronic addresses.”)(italics in original). Almeida has not complied with D.N.M. LR-Civ. 83.6 or with the Show Cause Order.

A prisoner litigant to whom the Court grants leave to proceed in forma pauperis must also comply with 28 U.S.C. § 1915. Under § 1915, after payment of an initial partial filing fee, a prisoner is “required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account” until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). Plaintiff Almeida has not complied with 28 U.S.C. § 1915(b)(2) nor has he complied with the Second Order.

Because Almeida has not kept the Court apprised of his current address, and because he has not followed the Second Order or the Show Cause Order, the Court may dismiss the action under rule 41(b) for failure to prosecute, to comply with the Federal Rules of Civil Procedure, or to comply with court orders. See Fed. R. Civ. P. 41(b); Olsen v. Mapes, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). The Court will, therefore, dismiss the Complaint without prejudice under rule 41(b).

IT IS ORDERED that Plaintiff Rafael Jesus Almeida’s Complaint for Violation of Civil Rights, filed April 17, 2017 (Doc. 1), is dismissed without prejudice.


UNITED STATES DISTRICT JUDGE

Parties:

Rafael Jesus Almeida
San Juan County Adult Detention Center
Farmington, New Mexico

Plaintiff pro se